



**TOWN OF TEWKSBURY  
CONSERVATION COMMISSION  
999 Whipple Road  
Tewksbury, MA 01876**

Anthony Ippolito, Chairman  
Carolina Linder, Vice-Chair  
Steve Deackoff, Clerk  
Dennis Sheehan  
Jonathan Parker

**Meeting Minutes  
June 3, 2015**

The meeting was called to order by Anthony Ippolito, Chairman at 7:00 p.m. at the Pike House. In attendance were Carolina Linder, Steve Deackoff, Dennis Sheehan, and Jonathan Parker. Also in attendance was Kyle Boyd, Conservation Agent, and Melissa Johnson, Recording Secretary.

**Approval of Meeting Minutes – May 13, 2015**

**MOTION: Mr. Parker made the motion to table the approval of the May 13, 2015 meeting minutes; seconded by Ms. Linder and the motion carried 5-0.**

**A) Notice of Intent, Jack Berube, 60 First Street, Map 81, Lots 167 & 198, DEP #305-989**

Present was Jack Berube of 2543 Main Street, Tewksbury, MA. Mr. Berube explained that he received Zoning Board of Appeals approval for the setbacks as shown on the most recent plan on May 28, 2015. Mr. Berube noted that the revised plan shows the no disturb area as well as the drainage calculations.

Mr. Ippolito noted that at the previous meeting the Commission requested the home be moved further away from the wetlands. Mr. Berube explained that he cannot move the home any closer to the street and noted that the Board of Appeals had requested the home be pushed back closer to the wetlands and the Commission was against that.

Mr. Berube explained that he is requesting to fill 200 square feet and replicate 400 square feet of wetlands and noted that he believes he can replicate up to 5,000 square feet according to DEP regulations. Mr. Boyd explained that DEP typically does not allow wetland fill and there are certain specifications on when this can be done. Mr. Boyd noted that he previously recommended that there be compensation for the no disturb encroachment and not just the wetland filling and expressed concerns with the ZBA having approved the matter as it does not allow for adjustments. Mr. Boyd suggested having the town engineer review the storm water information that has been submitted.

Mr. Parker noted that he does not feel this is a buildable lot and suggested Mr. Boyd reach out to town counsel to confirm this in fact a grandfathered lot as has been previously stated and can be built upon. Mr. Deackoff explained that town council

should have an opinion on whether there was an investment based expectation to have a home constructed on this lot. Mr. Berube explained that an important issue he has is he is unable to calculate the amount of water coming on to this property because it is coming from town owned land located across the street. Mr. Berube explained that he is willing to let the drainage remain as is; however, he does not feel he should lose the ability to construct on a lot and lose the value in his investment in the property because the town has been “dumping” water onto this lot.

Mr. Boyd suggested the town engineer run some calculations to determine if the storm water is being discharged onto this site. Mr. Berube noted that he inquired with the town engineer as to the history of the drains and street culverts and there is no documentation.

Ms. Linder noted that she feels that this is not a buildable site as most of the home will be in the no disturb area.

Mr. Boyd requested an explanation on what the Commission would like him to discuss with town counsel and Mr. Deackoff explained the opinion of town council is being sought to determine if there is an investment based expectation that this lot is buildable and do the bylaws allow for this. Ms. Linder noted that the caveat is the approval of the Commission.

Mr. Ippolito opened the hearing to the public.

Hector Montes of 49 New Jersey Road came forward and noted that he has attended all of the hearings on this matter and explained that it is a difficult situation for him as he personally knows Mr. Berube and his family. Mr. Montes explained that he has lived in his home since 1991 and he has seen changes taking place in the neighborhood. Mr. Montes noted that he “pretty much has a pond behind his house” and explained that this issue was raised when Marc Ginsburg was proposing to build here and nothing was ever built. Mr. Montes noted he is not sure what happened or why nothing was constructed. Mr. Montes explained that he became aware of this area years ago when his children were small because the area was so wet they did not want the kids to play there. Mr. Montes expressed concerns that another property will only increase the water and impact his property. Mr. Boyd asked if Mr. Montes knows when the culvert was constructed and Mr. Montes noted approximately 1995-1996.

**MOTION: Mr. Parker made the motion to continue, Notice of Intent, Jack Berube, 60 First Street, Map 81, Lots 167 & 198, DEP #305-989 to June 17, 2015 at 7:02 p.m.; seconded by Ms. Linder and the motion carried 5-0.**

**B) Abbreviated Notice of Resource Area Delineation, James Wu, 1201 Main Street, DEP #305-978 (Continued)**

The applicant has requested to continue this matter to June 17, 2015.

**MOTION:** Mr. Ippolito made the motion to continue Abbreviated Notice of Resource Area Delineation, James Wu, 1201 Main Street, DEP #305-978 to June 17, 2015 at 7:04 p.m.; seconded by Mr. Deackoff and the motion carried 5-0.

**C) Notice of Intent, Marc P. Ginsburg & Sons, Inc., Victor Drive, Map 73, Lot 30, DEP #305-990**

Present was the applicant Marc Ginsburg, Jim Hanley of Civil Design Consultants, and Dick Cuoco.

Mr. Hanley explained that a notice of intent was filed in March, 2015 for a proposed development located along Victor Drive. The underlining zoning is multi-family residential and they are developing under the community village overlay district. Mr. Hanley explained that they have been working to develop a plan for this site for over two years. The entire lot area is approximately 38 acres in area with approximately 1,000 feet of frontage. Mr. Hanley showed the location of the wetland areas on the plan and explained that the grades generally slope down slightly from Victor Drive to the abutting wetland areas. All of the utilities will be located along Victor Drive. There is a current ORAD on the lot that was issued in 2011 showing a boarding vegetated wetlands, 100 foot buffer associated with that, 50 foot no build, and 25 foot no disturb. The proposal is for 192 unit; 4 48 unit apartment buildings with 41 parking spaces provided at grade below each building; which makes it a five story building. There are four seven stall detached garages located throughout the development adjacent to the proposed buildings. Mr. Hanley explained that the overlay zoning requires that one covered parking space be provided in this district and they have provided for 41 with the four seven stall, covered garages. Mr. Hanley explained that one of the things they have tried to make an effort to do is reduce the impervious surface. The zoning requires approximately 500 parking spaces for the buildings where their data shows approximately 380 parking spaces; which is 125 parking spaces less and translates to an approximate acre reduction in impervious surface. Mr. Hanley explained that many interdepartmental review meetings have taken place with the town and showed one of the previous plans that were designed which had the parking wrapped around the entire 25 foot. Other site amenities include a rental office, maintenance building, dog park, picnic area, clubhouse and pool, as well as a half mile of walking trails along the 25 foot buffer for passive recreational use by the renters of the development.

Mr. Hanley noted that they are proposing four different infiltration systems throughout the site and explained that some of the initial comments they received were to do test pits in the basins to confirm the assumptions they were making regarding materials, ground water, etc. and they were determined to be conservative. Mr. Hanley explained that the system is a series of catch basins and is a closed drainage system filtering out to a sediment four-bay; which have been sized to meet the water quality volume required as they are in a Zone 1. Mr. Hanley noted that the system has been designed to meet the Storm water standards and is located beyond the 50 foot buffer to the wetland area. Mr. Hanley explained that there are three minor wetland impacts associated with the widening and improving of the existing sidewalk from 8 to 10 feet along Victor Drive. In addition,

there is an existing town discharge point into the wetlands where the existing headwall will need to be “kicked out” two to three feet resulting in minor impacts of 18 square feet in one location and 28 square feet in the another. The final wetland impact will be for the crossing where there will be an impact of 165 square feet along the face of the retaining wall. Mr. Hanley noted that there is an existing box culvert shown on the original plans submitted in March that met the stream crossing standards; however, as the result of some initial feedback from DEP, this has been addressed as DEP does not like the culvert with the bottom. The culvert has been modified to a 14 foot wide bottomless, concrete culvert. Mr. Hanley explained that they are currently in the process of preparing their responses to all of the comments that have been received.

Mr. Cuoco noted that the existing sidewalk along Victor Drive is eroding and needs to be repaired anyway.

Mr. Ippolito noted that he made a site visit today and the wetland areas have been clearly marked out. Mr. Cuoco referenced Sheet 2 that shows an area along the easterly side of the wetland and explained that the proposal is to put in a trail to connect to Livingston Park so the students from the Middle School could cut through.

Mr. Boyd noted that he has been providing the Commission with all of the review comments that have been received and requested that the applicant provide responses to the town engineer’s review letter for the next meeting. Mr. Hanley noted that approximately 8 review letters have been received and reviewed; however, it has taken some time to prepare responses. Mr. Boyd referenced item 6 of Mr. Hardiman’s review letter regarding contours potentially impacting the integrity of the no disturb zone and asked if this has been addressed. Mr. Hanley noted that Mr. Higgins expressed a similar comment and referenced Sheet C5E which provides an enlarged view of the 25 foot buffer. Mr. Boyd noted that his largest concern is the no disturb being maintained as it appears there has been some encroachment over time and this is a large project. Mr. Boyd requested that the entire no disturb zone be re-vegetated and a conservation restriction be put in place on this area to ensure it is not disturbed in the future. Mr. Cuoco will research the restriction further.

Ms. Linder suggested permanent demarcations also be done along the no disturb zone. Mr. Cuoco explained that they can do this; however, there is less likely to be encroachment given the project is an apartment building.

Mr. Deackoff asked where the walking trails are located and if they are just outside of the no disturb zone. Mr. Hanley showed the location of the trails and confirmed they are along the no disturb. Mr. Deackoff asked what will be put in place to separate the walking path from the wetlands and suggested guardrails or a wooden fence. Discussion took place on signage stating the area is conservation land and the distance for the signage. Mr. Boyd suggested meeting in the field to determine what is best for each area.

Mr. Cuoco explained that there are provisions in the lease signed by the tenants that they are to respect and maintain the dog park, walking trails, and other common areas or their lease could be terminated. Mr. Ginsburg noted that there will also be security on site.

Mr. Ippolito opened the hearing to the public and no one came forward to comment.

**MOTION:** Mr. Deackoff made the motion to continue Notice of Intent, Marc P. Ginsburg & Sons, Inc., Victor Drive, Map 73, Lot 30, DEP #305-990 to June 17, 2015 at 7:05 p.m.; seconded by Mr. Sheehan and the motion carried 5-0.

**D) Notice of Intent, New England Power Company, Utility Right of Way, Mass DEP #305-0991**

Present was Valerie Breach of VHB and Josh Holden of National Grid. Ms. Breach explained that they are present for geo-tech investigation within an existing power line right of way. The geo-tech explorations are needed to support the Merrimack Valley Reliability Project; which is a project that will be before the Commission in the future and aims to increase the resiliency and reliability of the overall infrastructure in the region. The geo-tech borings and probes are needed anywhere there is going to be closed structure in order to get information for design. There are two types: geo-tech boring and geotechnical probe. The borings are proposed anywhere there needs to be concrete foundation and span 6 inches. The probes will be a push sample and will be anywhere there will be direct in-bed structure. Access to all of the structures will be within the existing right of way and anything within the wetlands will have swamp matting. Erosion controls will be installed prior to work beginning.

Ms. Breach reviewed the various wetland resources in this area and explained that 36 boring and probes are planned within the wetlands. There will also be some investigations within the buffer zone and riverfront area; however, these are exempt under the Wetlands Protection Act, and, as a result, have not been included in this filing. The geo-tech investigations are considered minor activities under the Act as they are all temporary impacts and are considered negligible upon the resource areas. There will not be any tree clearing and access will be through the existing access road. Overall impacts will be approximately 2.2 acres; one acre of which will be for work areas and 1.2 acres for the access roads. The work areas are approximately 20 x 20 and all of the impacts will be temporary and erosions controls will be removed upon completion. Ms. Breach noted that they feel that a waiver is warranted as it is a public good project.

Mr. Boyd asked if all of the work is within the right of way and Ms. Breach confirmed this. Mr. Boyd noted that he has no concerns with the testing's; however because it is a notice of intent, he had the matter reviewed by a consultant and he is awaiting their response.

Ms. Linder asked if there is a timeline for the project. Ms. Breach noted that she believes the project is expected to go out to bid in July and would last for approximately a couple of months. Mr. Holden noted he would have to look into the exact timeline.

Mr. Ippolito opened the hearing to the public and no one came forward to comment.

**MOTION:** Mr. Parker made the motion to continue Notice of Intent, New England Power Company, Utility Right of Way, Mass DEP #305-0991 to June 17, 2015 at 7:07 p.m.; seconded by Ms. Linder and the motion carried 5-0.

**E) Request for Determination of Applicability, Michael Cantin, 41 Fieldstone Circle, Map 116, Lot 3**

Present was Michael Cantin of 41 Fieldstone Circle. Mr. Cantin explained that this is a minor project to move the existing fence in the rear of his yard back approximately 40 feet to straighten it out as it is currently in a “v” shape.

Mr. Ippolito noted that he visited the site today with Mr. Boyd and he does not see a problem with the project.

Mr. Boyd noted that he thought the fence was to be moved less than 40 feet and noted that 40 feet would put the fence right at the stream. Mr. Cantin noted that there would be 25 feet from the stream to the fence. Mr. Boyd explained that the boarding vegetated wetlands associated with the stream are approximately 8 feet off the bank. The fence would need to be at least 25 feet from that which would put the fence back 32 feet. Mr. Boy suggested the fence be pushed back 35 feet.

Ms. Linder asked if there is a proposal to address the vegetation. Mr. Cantin noted that there really is no vegetation and noted that he is willing to meet with the Commission on site to hear their recommendations. Ms. Linder noted that at this point it is not clear what will be cut and asked if any mature trees will be cut. Mr. Cantin explained that he will not be cutting any mature trees. Mr. Boyd noted he could visit the site with Mr. Cantin to review this further.

Ms. Linder suggested a restriction be put in place on which trees can be cut. Mr. Deackoff noted that the area would be maintained lawn and he feels that the homeowner should be allowed to cut the trees.

Mr. Ippolito opened the hearing to the public and no one came forward to comment.

**MOTION:** Mr. Ippolito made the motion to close the public hearing portion; seconded by Mr. Sheehan and the motion carried 5-0.

**MOTION:** Mr. Deackoff made the motion for a negative determination, Michael Cantin, 41 Fieldstone Circle, Map 116, Lot 3, standard order of conditions, the fence should be 35 feet away from the stream, Mr. Boyd shall assist with the tree clearing and monitor the project; seconded by Mr. Parker and the motion carried 5-0.

**F) Request for Determination, DSM MBI, LLC, 875 East Street, Map 102**

Present was Jeff Rider of Cuoco & Cormier Engineering, and Jim Lamp, Engineer with Market Basket. Mr. Rider noted that the project site is located at 875 East Street and is the Demoulas Market Basket complex. The proposal is for a 3,600 square foot addition to the front of the existing building. In addition, there is an interior courtyard in the existing building that they would like to add 2,200 square foot of additional building to as well as reconfigure the parking in the front of the building and restripe the existing paved area along the side. Mr. Rider noted that there are 3 isolated wetlands that have been flagged by Kurt Young. Mr. Rider showed the 100 foot buffer zone on the plan and noted there is a significant distance from the 100 buffer zone to where the proposed work area is. Mr. Rider explained that they believe that the project qualifies for negative 1 and negative 6 determinations.

Mr. Deackoff asked where the addition will be located and Mr. Lamp explained that it will be to the right hand side as you look at the building from East Street.

Mr. Boyd noted the work is outside the buffer zones; however, he requested they file as there were potential vernal pools. Mr. Boyd noted that he visited the site with Jeff from Wetland Preservation, Inc. and it has been determined that there are currently no vernal pools. Mr. Boyd recommended the trash buildup be removed and the applicant has agreed to remove the trash.

Mr. Rider noted that the existing detention pond has silted up over the years and they would like to clean this out.

Mr. Ippolito opened the hearing to the public.

John Mesa of Level Lane came forward and noted that he is present to see what the project was about.

**MOTION: Mr. Parker made the motion to close the public hearing portion; seconded by Ms. Linder and the motion carried 5-0.**

**MOTION: Mr. Deackoff made motion for negative determination, DSM MBI, LLC, 875 East Street, Map 102; seconded by Mr. Parker and the motion carried 5-0.**

**New Business**

**Land Donation adjacent to 2000 Whipple Road**

Mr. Boyd noted that the CPC had appropriated approximately \$5,000 for a consultant to design a plan for the property for recreational use; however, because a contract was not signed, the funds were sent back to the CPC. Mr. Boyd noted that the parcel is a great conservation site as it is surrounded by the river and there are many possibilities for recreational uses on the parcel. Mr. Boyd explained that he would like to bring in three different companies to obtain quotes on

landscaping for the parcels, to designate parking areas, etc. Mr. Boyd noted that he will obtain quotes prior to appropriating funds. Mr. Ippolito asked what is being considered for a recreational use and Mr. Boyd explained canoeing, etc.

Mr. Deackoff asked if the other portion of land has been obtained and Mr. Boyd noted that it has not been obtained due to the back taxes owed on the parcel.

Mr. Boyd suggested appropriating up to \$1,000 to remove the debris that is currently on the property.

**MOTION: Mr. Deackoff made the motion to appropriate up to \$1,000 from Conservation Trust fund for the purpose of clearing the debris at 2000 Whipple Road; seconded by Mr. Parker and the motion carried 5-0.**

### **“Adopt a Rain Garden” Program**

Mr. Boyd explained that there is an “Adopt a Rain Garden” program for the rain gardens that were created as part of the grant for Long Pond to filter the nutrients entering the pond. There are 10 rain gardens that are located on town property and the town does not have the staff to maintain the gardens. As a result, the “Adopt a Rain Garden” program was created. Mr. Boyd suggested the Commission adopt one of the gardens.

It was the consensus of the members to adopt one of the rain gardens on town property. Mr. Boyd noted it will be the main rain garden located at the entrance.

**MOTION: Mr. Deackoff made the motion for the Conservation Commission to adopt a rain garden at Long Pond; seconded by Mr. Parker and the motion carried 5-0.**

### **Old Business**

#### **Educational Brochure**

Ms. Linder noted that she has provided the Town Crier with information on the Commission’s goals and the brochure that will be sent out. The article is expected to be published tomorrow.

Mr. Ippolito suggested providing copies of the brochures at the town clerk’s office, town manager’s office, at the meetings, etc.

### **Adjourn.**

**MOTION: Mr. Deackoff made the motion to adjourn; seconded by Mr. Sheehan and the motion carried 5-0.**

*Approved: 6/17/16*



List of documents for 6/3/15 Agenda  
Documents can be located at the Community Development Office

Notice of Intent, Jack Berube, 60 First Street, Maps 81 Lots 167 & 198, DEP # 305-989

- *Site Plan submitted by Cyprus Design Inc. dated March 27, 2015*
- *Notice of Intent Form 3 submitted by Jack Berube*
- *Stormwater Forms dated May 29, 2015*
- *Replication Plan from Basbanes Wetland Consulting dated May 4, 2015*

7:04 P.M           Abbreviated Notice of Resource Area Delineation, James Wu, 1201 Main Street, DEP # 305-978  
(Continued)

- *Review Letter from Mel Higgins dated Dec 8., 2014*
- *ANRAD application dated Nov. 21, 2014*
- *Existing Conditions Plan submitted by Otte, Dwyer, with markups by Weston & Sampson*
- *Review letter from Mel Higgins dated Dec. 15, 2015*
- *Mel Higgins Amended Existing Conditions Plan*

7:06 P.M           Notice of Intent, Marc P Ginsburg & Sons, INC., Victor Drive, Map 73 Lot 20, DEP #305-990

- *Review letter from Mel Higgins dated March 18, 2015*
- *Notice of Intent submitted by Norse Environmental dated March 2015*
- *Proposed Riverfront Impact Assessment submitted by Jim Hanley dated March 4, 2015*
- *Existing Riverfront assessment submitted by Jim Hanley dated March 4, 2015*
- *Site development plans dated March 4, 2015 submitted by Civil Design Consultants*
- *Wildlife Habitat Evaluation submitted by Norse Environmental dated June 3, 2015*
- *Review letter from Weston & Sampson signed by Mel Higgins dated June 1, 2015*
- *Abridged Site Development Plans submitted by James Hanley dated May 29, 2015*
- *Response letter from Jim Hanley dated May 27, 2015*
- *Review letter from Town Engineer Kevin Hardiman dated May 14, 2015*

7:07 P.M           Notice of Intent, New England Power Company, Utility Right of Way, Mass DEP #

- *New England Power Company Notice of Intent Packet dated*

7:08 P.M           Request for Determination of Applicability, Michael Cantin, 41 Fieldstone Circle, Map 116 Lot 3

- *Request for Determination of Applicability Packet & Form WPA 1*

7:10 P.M           Request for Determination, DSM MB I LLC, 875 East Street, Map 102 Lot 23 & 58

- *Request for Determination of Applicability Packet & Form WPA 1*

New Business

- Land Donation adjacent to 2000 Whipple Road
- Open Space & Recreation Plan